

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-114420-12

Date:

May 15, 2012

### Legend

X =

State =

Trust =

A =

B =

a =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This responds to a letter dated March 27, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date2. During his lifetime, A transferred a shares of X stock to Trust. X represents that, during the lifetime of A, Trust was treated as owned by A under subpart E of part I of Subchapter J, and therefore was an eligible S corporation shareholder under § 1361(c)(2)(A)(i).

A died on Date3. Under the terms of Trust, upon A's death, the X stock held by Trust is to be held for the benefit of A's spouse, B. Between Date3 and Date4, Trust was a trust described in § 1361(c)(2)(A)(ii), and therefore was an eligible S corporation shareholder until Date4.

X represents that Trust satisfies the requirements to be treated as a Qualified Subchapter S Trust ("QSST") under § 1361(d) since Date4, except that Trust did not make a timely QSST election under § 1361(d)(2).

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date4. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by a corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date4 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date4 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d) for reasons not addressed in this letter. This

ruling is contingent upon B (or B's legal representative) filing a QSST election for Trust, with an effective date of Date4. The election must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust qualifies as a QSST.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to X's authorized representatives.

Sincerely,

Melissa C. Liquerman  
Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: